

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555(SCC)

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6 In the Matter of:

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8 LEHMAN BROTHERS HOLDINGS INC.,

9 Debtor.

10 - - - - - x

11

12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, New York

15

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17 March 27, 2014

18 9:08 AM

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22 B E F O R E :

23 HON SHELLEY C. CHAPMAN

24 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Pre-Trial Conference for Evidentiary Hearing
2 Scheduled for April 1, 2, and 3.

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Good morning, please have a seat.

4 All right, thank you for coming in on the early
5 side today to accommodate my schedule. All right, who'd
6 like to start?

7 MR. MILLER: Your Honor, if I may for Lehman
8 Brothers Holdings Inc.

9 THE COURT: Sure. Yes, please.

10 MR. MILLER: Good morning, Your Honor, may it
11 please the Court, I'm Ralph Miller with Weil, Gotshal &
12 Manges here for the plan administrator, Lehman Brothers
13 Holdings Inc. With me at counsel table are Tom Hummell
14 (ph), who's the co-general counsel of LBHI, and Denise
15 Alvarez, Teresa Brady, and Doron Kenter from Weil, Gotshal.

16 THE COURT: Okay.

17 MR. MILLER: As Your Honor knows this is a
18 pretrial conference to prepare for next week's hearing on a
19 series of objections in which the sole issue is that LBHI
20 has moved to classify claims based on restricted stock units
21 and contingent stock awards as equity under its Chapter 11
22 plan.

23 Originally there were 3,738 proofs of claims based
24 on bonus or commission compensation that was either paid or
25 due to be paid in stock units or stock awards, but over

1 3,500 of those have already been classified as equity
2 because the claimant stopped pursuing their claim. There
3 are about 225 claims left for 213 claimants --

4 THE COURT: Right.

5 MR. MILLER: -- that there going to be considered
6 next week.

7 At the first hearing of this group of objections
8 Judge Peck indicated he would allow these claimants to make
9 a full record, and about 100 of those claimants have pursued
10 over a year of discovery.

11 Now LBHI has worked with the claimants --

12 THE COURT: Right.

13 MR. MILLER: -- and their lawyers to simplify the
14 upcoming hearing through stipulations, agreements, and
15 exhibits.

16 THE COURT: Right.

17 MR. MILLER: For example, we have a 20-page
18 stipulation with 21 exhibits attached to it and some other
19 stipulations that were coming in. As a result of these
20 efforts --

21 THE COURT: So let me -- so there are more
22 stipulations coming in? Because I've read -- I haven't read
23 the joint appendix or the exhibit binders, obviously in
24 full, but I've been studying the stipulation and the
25 procedures and I've read the memoranda of law and I had some

1 -- I have some questions about -- largely about the conduct
2 of the hearing.

3 MR. MILLER: All right. Well, and Your Honor,
4 I'll try to address some of those.

5 THE COURT: Okay.

6 MR. MILLER: But let me respond on what those
7 stipulations are. There are some stipulations that
8 essentially are admitting all the exhibits subject to some
9 relevance objections.

10 THE COURT: Okay.

11 MR. MILLER: So they're not substantive
12 stipulations --

13 THE COURT: Okay.

14 MR. MILLER: -- like the one that has facts in
15 them.

16 THE COURT: Got it.

17 MR. MILLER: I believe that's correct.

18 THE COURT: Okay.

19 MR. MILLER: Right? And we do have -- we have
20 some declarations that have just been proposed that we're
21 working on getting admitted, we think there may be some
22 relevance objections left to portions of those, but we think
23 that in context it'll be a lot easier to deal with those in
24 the hearing --

25 THE COURT: Okay.

1 MR. MILLER: -- than to try to explain to context
2 to you --

3 THE COURT: That answers that yes.

4 MR. MILLER: -- today.

5 THE COURT: Okay.

6 MR. MILLER: So as far as the hearing is
7 concerned, Your Honor, the Court, as you know, had entered a
8 hearing procedures order --

9 THE COURT: Right.

10 MR. MILLER: -- it provided for up to three days
11 of hearings, if needed. It is --

12 THE COURT: Right.

13 MR. MILLER: -- in fairness it's always been the
14 position of LBHI that an evidentiary hearing is not needed
15 and that any material facts can be derived from the equity
16 awards program documents.

17 THE COURT: Right.

18 MR. MILLER: So --

19 THE COURT: So let's go to the organization of the
20 evidentiary hearing, which is paragraph 17 of the
21 stipulation.

22 MR. MILLER: Yes, Your Honor.

23 THE COURT: So it says:

24 "The first day the hearing will be reserved for
25 LBHI and the represented participants to present their

1 cases. LBHI will open, have three hours, including opening
2 statements and direct and cross-examinations."

3 So I don't -- my first question is -- so then I
4 look at the witness lists and there is no live direct
5 testimony in LBHI's case; is that correct?

6 MR. MILLER: That's correct, Your Honor.

7 THE COURT: Okay. Then -- so you'll be indicating
8 -- you'll be proceeding by way of proffer or --

9 MR. MILLER: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. MILLER: And we hope to give some time back to
12 the Court.

13 THE COURT: Okay. All right. Then it says, "And
14 cross-examinations," and that's where I get lost. Because
15 in a typical case then the other side would cross-examine
16 your witnesses. Is that what that refers to?

17 MR. MILLER: I will ask for clarification. I
18 think that's correct, but I think the intent was that that
19 three-hour block was going to have enough time built into it
20 so that if we did offer a live witness a reasonable length
21 of cross-examination could be included and the Court could
22 plan on the three-hour block.

23 THE COURT: Okay. So that three-hour block is
24 your direct case, right?

25 MR. MILLER: Or less, Your Honor, we hope.

1 THE COURT: Okay. But then in terms of the cross-
2 examination, since you're not going have a live witness, is
3 that the opportunity for any of the represented claimants or
4 the pro se claimants to cross-examine your declarant?

5 MR. MILLER: Well, there have been no objections
6 to our declarations, Your Honor, and the only declarant we
7 have that actually -- I have some document declarations and
8 then we have Mr. Twosto (ph), who has offered some numeric
9 testimony. There was a 30(b)(6) deposition.

10 THE COURT: Right. Right.

11 MR. MILLER: Parts of that have been designated by
12 both parties --

13 THE COURT: Okay.

14 MR. MILLER: -- no one has asked to have that
15 person present. So we don't believe there's going to be
16 anything to --

17 THE COURT: Okay.

18 MR. MILLER: -- cross-examine.

19 THE COURT: Well why don't I ask -- the
20 represented participants are all here by counsel, right?

21 MR. KAPLAN: Yes, Your Honor.

22 THE COURT: All right. So does anyone intend to
23 cross -- to conduct any cross-examination during LBHI's case
24 in chief?

25 MR. KAPLAN: Eugene Kaplan, I represent the

1 Neuberger claimants.

2 THE COURT: Yes.

3 MR. KAPLAN: The only declaration that was offered
4 with respect to my clients is the Twosto declaration which
5 has numbers in it. I think the numbers are correct, so I
6 don't have -- I don't intend --

7 THE COURT: Okay.

8 MR. KAPLAN: -- to cross-examine him, and I don't
9 intend to cross-examine Mr. Miller on the documents that
10 were attached to his declaration. So no, I don't see any
11 cross-examination.

12 THE COURT: Okay. Okay.

13 MR. KAPLAN: Anybody else?

14 THE COURT: And was it contemplated that the --
15 was it contemplated that the -- and I don't know if any of
16 the pro se claimants are here or on the phone -- but was it
17 contemplated that the pro se claimants would conduct any
18 cross-examination?

19 MR. MILLER: I think it was not, Your Honor, but
20 there is a time reserved in the second day --

21 THE COURT: Yes.

22 MR. MILLER: -- for the pro se claimants to --

23 THE COURT: It says --

24 MR. MILLER: -- do what they wish to do. We have
25 noticed the pro se claimants with the various orders and

1 procedures --

2 THE COURT: Right.

3 MR. MILLER: -- and other things and no one has --

4 THE COURT: Okay.

5 MR. MILLER: -- has made any request that we know
6 of for cross-examination. I see someone is rising --

7 THE COURT: Okay.

8 MR. MILLER: -- to speak.

9 THE COURT: Yes, sir?

10 MR. CARRAGHER: Your Honor, Daniel Carragher form
11 the firm of Day Pitney. I represent a claimant, Fabio
12 Liotti --

13 THE COURT: Right.

14 MR. CARRAGHER: -- that's not part of the
15 represented parties group, although he's not pro se, so I'm
16 representing him, but I'm not -- technically not part of
17 this coordinating group.

18 THE COURT: I'm sorry. Is he a --

19 MR. CARRAGHER: So I would be --

20 THE COURT: -- he is represented pro se, is that
21 what you're saying?

22 UNIDENTIFIED SPEAKER: Under the terms of the
23 order, yes, Your Honor, I think that's correct.

24 MR. CARRAGHER: They chose the term represented
25 parties, it wasn't my choice. Yes, but he is a claimant

1 with --

2 THE COURT: Okay. I -- now I'm completely
3 confused. I had thought that you -- you're a signatory to
4 this, so I had thought that --

5 MR. CARRAGHER: I'm not.

6 THE COURT: -- you're a represented -- are you not
7 a signatory to this?

8 MR. CARRAGHER: No, I'm not, Your Honor. I have
9 coordinated with this group off and on over the last couple
10 of years --

11 THE COURT: Okay.

12 MR. CARRAGHER: -- and I'm generally in agreement
13 with them --

14 THE COURT: Okay.

15 MR. CARRAGHER: -- although we don't have all of
16 the same issues.

17 THE COURT: All right. Are you going to conduct
18 any cross-examination?

19 MR. CARRAGHER: No, that's what I wanted to --

20 THE COURT: Okay.

21 MR. CARRAGHER: -- rise to say, Your Honor.

22 THE COURT: Fine. Okay. So that takes care of
23 day one. I'm sorry, that takes care of the first three
24 hours of day one.

25 Then let's talk about what the represented

1 participants intend to do during their three hours on day
2 one.

3 MR. KAPLAN: If I might, Your Honor.

4 THE COURT: Mr. Miller, you can stay there.

5 MR. KAPLAN: With respect to the Neuberger
6 claimants --

7 THE COURT: Right.

8 MR. KAPLAN: -- I intend to make an opening
9 statement.

10 THE COURT: Okay.

11 MR. KAPLAN: We I think have supplemental
12 declarations with -- with Your Honor's permission, which we
13 will file that will encompass the direct testimony of the
14 Neuberger witnesses.

15 THE COURT: Okay.

16 MR. KAPLAN: I just circulated them last night, so
17 there will be no -- I don't think there will be any need for
18 any direct testimony by the Neuberger witnesses. We have
19 agreed to put in, subject to objections as to relevance or
20 other -- not -- all of the Neuberger exhibits have been
21 stipulated to be authentic, the issue whether they are
22 received in evidence we will debate at the hearing if there
23 are any issues.

24 THE COURT: Okay.

25 MR. KAPLAN: So my sense is there wouldn't be any

1 direct --

2 THE COURT: Okay.

3 MR. KAPLAN: -- testimony by the Neuberger
4 witnesses.

5 Mr. Miller has indicated that Lehman may --
6 reserves the right to cross-examine those witnesses. They
7 will let us know some time during our case. And if they in
8 fact cross-examine Mr. Ramolo (ph), who is one of the
9 declarants, I would ask for leave to present Christian
10 Reynolds (ph), who's another of the claimants.

11 We haven't given -- we didn't give notice because
12 we didn't know that Mr. Ramolo was going to be cross-
13 examined. Mr. Reynolds could testify similarly to
14 Mr. Ramolo. He's a claimant, he's a managing director of
15 Neuberger, and his testimony would be pretty much identical
16 to that of Mr. Ramolo. But if they intend to cross-examine
17 Mr. Ramolo I would like to call him in rebuttal for that.

18 THE COURT: Okay. So here -- now we get to the
19 part that I don't understand, which is that the witness list
20 -- there's a list of compensation claimants rebuttal witness
21 list. When -- so in a normal case there would be case in
22 chief, there would be defense case, and then there would be
23 a rebuttal case. Where -- where is the rebuttal case
24 happening in this schedule?

25 MR. KAPLAN: It's --

1 THE COURT: What is that --

2 MR. KAPLAN: -- it's kind of -- it's kind of up in
3 the air, but I think it's all within the six hours that --
4 that we have on the first day. The three hours and the
5 three hours. As best as I can tell it all comes in in that
6 first days testimony.

7 THE COURT: Okay.

8 MR. KAPLAN: I mean I guess if we --

9 THE COURT: So what you're -- what you're calling
10 a rebuttal witness though is what I would just call a
11 witness.

12 MR. KAPLAN: Well -- well, yeah, he's a witness,
13 except --

14 THE COURT: Right?

15 MR. KAPLAN: -- except that I wouldn't -- I
16 wouldn't call him unless -- unless they -- unless they --

17 THE COURT: Right. But --

18 MR. KAPLAN: -- decide to cross-examine Ramolo.
19 If they do yes, then I'll -- I would like to call Christian
20 Reynolds, but if they decide not to question Ramolo then I
21 don't think there's need to duplicate the testimony and so
22 on.

23 THE COURT: Okay. But let me -- I'm just trying
24 to in my own simplistic way fit this into a more -- a less
25 complicated procedurally as --

1 MR. KAPLAN: Yeah.

2 THE COURT: -- complicated case, which is that so
3 there's a case in chief and then when the defense stands up
4 that's not a rebuttal case, that's --

5 MR. KAPLAN: That's our case.

6 THE COURT: -- that's your case.

7 MR. KAPLAN: Right.

8 THE COURT: Right? A rebuttal case is what the
9 plaintiff --

10 MR. KAPLAN: Right.

11 THE COURT: -- puts on in response to the defense
12 case.

13 MR. KAPLAN: Right.

14 THE COURT: So it's the word rebuttal that threw
15 me.

16 MR. KAPLAN: Forget -- forget the word rebuttal.

17 THE COURT: Very good. Okay.

18 MR. KAPLAN: We do not intend -- the Neuberger
19 claimants do not intend to call any witnesses --

20 THE COURT: Okay.

21 MR. KAPLAN: -- on their direct case if Your Honor
22 grants us leave to file the supplemental declarations.

23 THE COURT: I got it.

24 MR. KAPLAN: If however Mr. Miller and Lehman
25 decide to cross-examine Mr. Ramolo we would ask for leave to

1 add to our witness list Christian Reynolds, who we didn't
2 put on the list initially, who is also a managing director,
3 also a claimant, who could testify as we indicated in our
4 letter to -- to Mr. Miller last night similarly to
5 Mr. Ramolo about the entreaties he received from Ms. Steiger
6 (ph) to sign up at the time of the merger between Neuberger
7 and Lehman.

8 THE COURT: Okay. All right. So you two still
9 are going to be talking about that.

10 MR. KAPLAN: Yeah.

11 MR. MILLER: Yes, Your Honor. And to demystify
12 this just a little bit so we don't have to talk around it,
13 this is all about an economic duress defense --

14 THE COURT: Right.

15 MR. MILLER: -- that is being asserted.

16 THE COURT: Right.

17 MR. MILLER: And, for example, part of the LBHI
18 objection is the most recent declaration drafted looks to us
19 like a brief not like a witness declaration. It has a bunch
20 of legal conclusions in our view. So I think some of this
21 rebuttal issue may have to do with how much of this the
22 Court actually allows to be heard. I think that's maybe
23 what rebuttal was meaning -- had to do with, I think that's
24 how this terminology came about.

25 We think that actually what rebuttal means is late

1 designated here. It is a code word for things they've
2 decided to add later. And so we -- at this point we don't
3 want to restrict the Court's access to a full record, so
4 we're not planning to say to the Court you shouldn't hear
5 it --

6 THE COURT: Okay.

7 MR. MILLER: -- (indiscernible - 00:13:46) know
8 it, but we do want to take the position, Your Honor, that we
9 believe this entire duress digression is both irrelevant and
10 unavailable, for example, because it wasn't raised until
11 years later.

12 THE COURT: Right. Well, I think that in
13 reviewing all of this it seems as if -- that initially at
14 least Judge Peck was inclined kind of on an across the board
15 basis to deal with these claims as a matter of law, and then
16 it became clear that represented individuals and pro se
17 individuals wanted to have an opportunity to present facts
18 in evidence that brings their particular claims outside the
19 scope of the legal framework that would otherwise seem to
20 apply, is the best way that I could put it, and that this
21 very nuanced procedure was intended to accommodate every
22 single persons' opportunity to have due process and present
23 their case within limits, that due process doesn't mean
24 endless process, it means that process which is due. And
25 this stipulation now reflects the parties' agreement as to

1 what process is due and what process everyone is going to
2 get, and it's going to happen during those three days next
3 week, right?

4 MR. MILLER: I think that's a fair summary as our
5 understanding goes, Your Honor.

6 THE COURT: Right. Okay.

7 MR. MILLER: And we're trying hard to cooperate
8 with that process.

9 THE COURT: Okay. Okay. I mean it's impressive.
10 So --

11 MR. KAPLAN: Yeah, I think we're all trying to
12 streamline this --

13 THE COURT: Okay.

14 MR. KAPLAN: -- as best we can and --

15 THE COURT: The only concern that I have is not so
16 much on day one, and we'll go from 10:00 to 1:00 and we'll
17 take an hour break and then we'll go from 2:00 to 5:00 and
18 that'll be -- that'll be day one. My concern -- and I
19 guess, Mr. Miller, this is largely directed at you and your
20 colleagues, is the logistics of day two, because we have --
21 chambers has gotten communications that a lot of folks want
22 to testify by phone, appear by phone, et cetera.

23 So just to deal with something purely logistical
24 at the moment we had originally thought that we would
25 conduct this in Judge Lifland's courtroom where I'm in the

1 middle of conducting another trial. That courtroom is all
2 wired up with technology for that trial and I am going to be
3 sitting on that trial till late in the day on Monday the
4 31st. So it's not going to be possible to have the
5 technical people take out that crowds' stuff and put in your
6 stuff in there. So we're going to direct your folks to come
7 here and set up however you need to set up.

8 MR. MILLER: If it's any help, Your Honor, we
9 don't have any stuff.

10 THE COURT: Somebody called and said they had
11 stuff, they had technology that they wanted to set up, so if
12 that's not true great, then we're just going to do it the
13 old fashion way with paper.

14 Sir?

15 MR. SCHAGER: Sorry, Your Honor, Richard Schager,
16 and it was my firm that called in about the technology, and
17 if the Court prefers to work with paper we're happy to work
18 with paper.

19 Our idea was that for purposes of -- excuse me --
20 examining witnesses and for the Court's convenience there
21 are certain exhibits that might be easily read on screen and
22 would facilitate the hearing.

23 THE COURT: I am at your -- I mean my rule is I
24 will do whatever the parties want to do to make it easier
25 for them. I'm happy to work with paper, I'm happy to have

1 you send in people to wire up to technology. So we'll do --

2 MR. SCHAGER: Okay.

3 THE COURT: -- we are at your service.

4 MR. SCHAGER: We can work that out then.

5 THE COURT: So just decide what you want to do.

6 If you do want to send people in it's going to have to be
7 here just because I can't get the other people out of the
8 other room fast enough --

9 MR. SCHAGER: Well, I think --

10 THE COURT: -- and I frankly didn't know how many
11 people are going to be here during your actual trial. I
12 don't know, are you going have dozens of people, are you
13 going to have hundreds of people, do you know? Because we
14 then will set up an overflow room as we do in large cases
15 and that I can do easily. So in other words if the
16 courtroom is not large enough to hold everybody via screens
17 other people can participate -- you know, can watch from the
18 other room.

19 Does anybody have a notion of if we're talking
20 about dozens or hundreds?

21 MR. SCHAGER: Your Honor, I don't think we're
22 talking about a large group in the courtroom --

23 THE COURT: Okay.

24 MR. SCHAGER: -- but there's one potential hiccup,
25 and you eluded to it already, to our knowledge we're

1 expecting three pro ses --

2 THE COURT: Okay.

3 MR. SCHAGER: -- to offer testimony on Tuesday.

4 THE COURT: Okay.

5 MR. SCHAGER: And I know of one or two others who
6 may come to observe.

7 THE COURT: Okay.

8 MR. SCHAGER: But they've told me that they were
9 not intending to offer any statements -- sorry I said on
10 Tuesday, I meant on Wednesday --

11 THE COURT: Okay.

12 MR. SCHAGER: -- on Wednesday morning. They might
13 come to observe one or both days, but I -- myself I have not
14 heard from more than half a dozen people who expect to be
15 here on the pro se side --

16 THE COURT: Okay.

17 MR. SCHAGER: -- and as far as I know the
18 represented claimants would be a very small group, probably
19 those who are coming to testify.

20 But Your Honor said that you'd been getting calls
21 from -- from other people, and I don't know if pro ses are
22 contacting you without contacting us.

23 I would say pursuant to Judge Peck's order we did
24 reach out and we've tried to facilitate communications, but
25 they may have decided not to communicate through us, they

1 may have decided to communicate directly to the Court.

2 THE COURT: Okay. Well, I -- I'm prepared for a
3 little bit of bobbing and weaving, so that's -- that's not a
4 problem, and we'll just do our best to keep things flowing
5 smoothly throughout. There may be some hiccups, but we'll
6 just deal with them as they come.

7 MR. MILLER: And, Your Honor, in the bobbing and
8 weaving category, we would be prepared to present any short
9 closing that LBHI has hopefully on Wednesday and try to give
10 you back Thursday if this moves rapidly, and think it would
11 be helpful if everyone recognized the possibility that this
12 three-day hearing might -- might be done in two days. But
13 we're here and we're prepared, and if the Court chooses to
14 extend the time for the pro ses obviously that's going to be
15 the Court's --

16 THE COURT: Okay.

17 MR. MILLER: -- discretion, but the great unknown
18 here is that there are over 100 pro se --

19 THE COURT: Right.

20 MR. MILLER: -- parties.

21 THE COURT: We have -- we have set aside the three
22 days, if we can conclude it earlier for the sake of
23 everybody that would be lovely, under normal circumstances I
24 would say let's have a long day, but I didn't get out of
25 here until 9 o'clock last night and I don't know that I have

1 another weeks worth of 12-hour days in me to be honest. So
2 if we have to go to the third day that's fine, but beyond
3 that we're -- you know, it's not -- we're not going to do
4 that.

5 And now in terms of the -- again, in a more
6 traditional kind of a hearing there might be post-trial
7 submissions. I take it that we're not doing that, that
8 you're going to do -- it was not contemplate and that you're
9 going to do your closings and we're going to close the
10 record and then I'm going to take it under submission.

11 MR. MILLER: Certainly as far as LBHI is concerned
12 we think that's the efficient way to proceed, Your Honor.

13 THE COURT: Okay.

14 MR. MILLER: We think plenty of money has been
15 spent on briefing at this point.

16 THE COURT: Okay. All right.

17 Yes, ma'am?

18 MS. SOLOMON: Your Honor, good morning, Lisa
19 Solomon --

20 THE COURT: Yes, Ms. Solomon.

21 MS. SOLOMON: -- on behalf of a group of
22 compensation claimants.

23 With regard to day one on behalf of my clients I
24 am not participating, I am not putting any witnesses on the
25 stand --

1 THE COURT: Okay.

2 MS. SOLOMON: -- I think that the declarations
3 that have been submitted are more than sufficient to carry
4 the burden of compensation claimants in conjunction with the
5 memoranda of law that had been submitted.

6 And I believe that's correct, that with the
7 initial brief that was submitted and the opposition brief by
8 both sides that there's no requirement for further briefing
9 to the Court --

10 THE COURT: Okay.

11 MS. SOLOMON: -- on the -- on the trial.

12 THE COURT: Okay. I would -- if I had to make a
13 guess, unless day two is very, very short, I would say that
14 we would go to day three for closing because closing is very
15 important to me, it's my time to really engage with counsel
16 and ask questions that I have about the cases and the record
17 that's been presented, and I just think that probably in
18 order to give me the maximum amount of time to be prepared
19 for that and to give you folks the maximum amount of time
20 probably that will be day three. So I would assume that
21 that's what -- the way it's going to play out.

22 So there have been no motions in limine, correct?

23 MR. MILLER: Correct, Your Honor.

24 MS. SOLOMON: Correct.

25 MR. KAPLAN: Correct.

1 THE COURT: Okay. And you don't have any pending
2 disputes.

3 MR. MILLER: Well, we don't think we have pending
4 disputes that we think the Court should consider, Your
5 Honor. As I say we have some relevance issues that are left
6 open.

7 THE COURT: Okay.

8 MR. MILLER: We may be able to resolve them, but
9 they're -- the context is fairly complex and it seems to us
10 it would be -- from LBHI's standpoint if we don't resolve
11 them they will come up in context --

12 THE COURT: Okay.

13 MR. MILLER: -- and at that point it will be
14 perfectly clear why LBHI thinks it's not relevant and they
15 think it is relevant --

16 THE COURT: Okay.

17 MR. MILLER: -- and I'm sure you will probably say
18 you'll give it whatever weight it deserves would be my guess
19 on how those are going to be resolved. I can't predict.

20 THE COURT: It would be a bold prediction.

21 MR. MILLER: What?

22 THE COURT: That would be a bold prediction.

23 All right. So is there anything else that we need
24 to do today?

25 MR. MILLER: Not as far as LBHI is concerned, Your

1 Honor. We look forward to trying to present an efficient
2 matter.

3 And I hope the Court understands, we've said this
4 before, LBHI is not in the business of denying claims, it's
5 in the business of trying to pay those claims that are due,
6 and it particularly wants to have the former employees of
7 the Lehman system, LBHI was the only source of stock, so
8 there are people from all over the Lehman group of companies
9 who are involved, we want them to have their full
10 opportunity to present their case and we want the Court to
11 consider it fully and openly, but we believe that this is a
12 matter that is governed by the law and we are -- we believe
13 we're all obligated to follow the law even though there are
14 certainly sympathy issues and other considerations here.

15 THE COURT: Understood.

16 MR. MILLER: So we want a full hearing and we
17 appreciate the cooperation that everyone has shown --

18 THE COURT: Okay.

19 MR. MILLER: -- in trying to get it as manageable
20 for the Court as possible.

21 THE COURT: Okay. Well it looks good to me and
22 I'm obviously still to a certain extent playing catch up,
23 but I think I have -- I think I understand the way this is
24 supposed to unfold, you've clarified the couple of questions
25 that I had mostly related to the procedure.

1 Is there anything else?

2 MS. SOLOMON: No, Your Honor.

3 MR. MILLER: Not from us, Your Honor.

4 THE COURT: Yes, sir?

5 MR. SCHAGER: One small point, Your Honor --

6 THE COURT: Yes.

7 MR. SCHAGER: -- about additional submissions.

8 The Court has in the second brief from the
9 represented claimants a page that was tacked onto the end
10 that tried to expand the citations that were -- the
11 citations to declarations that were noted in the statement
12 of facts in that brief. That additional page was submitted,
13 added to the brief with the kind courtesy of Lehman's
14 counsel for which I'm grateful.

15 It seems to me, Your Honor --

16 THE COURT: Is there -- I'm just trying to see
17 which document this is. This is the --

18 MR. SCHAGER: It would have been attached --

19 THE COURT: -- memorandum in further opposition?

20 MR. SCHAGER: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. SCHAGER: And there should be the last page
23 there --

24 THE COURT: Yes.

25 MR. SCHAGER: -- which is just --

1 THE COURT: Supplemental citations.

2 MR. SCHAGER: -- supplemental citations.

3 THE COURT: Okay.

4 MR. SCHAGER: Those -- that supplement refers to
5 about 15 citations. I frankly think it would be helpful for
6 the Court to have a little more guidance through the other
7 25 citations who they -- they're not my client so I'm not
8 trying to gain any unfair advantage for myself here, I'm
9 just trying to think of well what would be useful for the
10 Court, and it seems to me that an index citing to the full
11 list of declarations and the relevant paragraphs, which are
12 not the same for each declaration, would be helpful for the
13 Court in terms of going through those declarations and
14 seeing what they're cited for. That could be a supplemental
15 submission submitted either in advance of the hearing or --

16 THE COURT: Who would --

17 MR. SCHAGER: -- after the hearing.

18 THE COURT: Who would prepare that?

19 MR. SCHAGER: Represented claimants would prepare
20 it.

21 MS. SOLOMON: Your Honor?

22 THE COURT: Yes.

23 MS. SOLOMON: Mr. Schager has made a request I
24 think on behalf of his clients and not on behalf of all of
25 the represented claimants just for purposes of

1 clarification.

2 THE COURT: Okay. I'm a little confused. If he's
3 -- if you're volunteering to do something that no one has an
4 objection to then I don't have an objection to it. But
5 maybe I'm not understanding what -- what the request is.
6 This is just an index, right?

7 MR. SCHAGER: Let me try to clarify the request,
8 Your Honor, if I may.

9 It's not adding any new words to the brief, it's
10 just that because of space limitations where we got to
11 writing the brief the declarations were not fully cited. In
12 my view those facts are very important for the Court and the
13 Court would want to be able to refer to the other
14 declarations that support the statements made in the brief.

15 THE COURT: But let's just take an example,
16 because I'm not -- I'm not following what you're saying.
17 All right, so page 4, lines 10 and 11.

18 (Pause)

19 THE COURT: So in other words on page 4 of the
20 brief where in the brief there's a citation to the Virgilio
21 Kasupli (ph) declaration -- I'm -- I -- what you're telling
22 me is that I should also go and look at in addition to
23 looking at the Spiro (ph) and Kasupli to these other
24 declarations, these other paragraphs. That's what this page
25 does?

1 MR. SCHAGER: That's what that page does that's in
2 the brief right now, Your Honor.

3 THE COURT: So you make the statement, "Claimants
4 also assert" -- there's a typo -- "that did not consider
5 themselves as stockholders based on their grants of RSU."
6 So you want to cite me to everybody else's declaration where
7 they make a similar statement.

8 MR. SCHAGER: Well in a nutshell, Your Honor, yes,
9 that's correct. And if I can offer a sentence of --

10 THE COURT: Well wait, I'm just trying --

11 MR. SCHAGER: I'm sorry.

12 THE COURT: -- so you've done that here, now what
13 more do you want to do?

14 MR. SCHAGER: There are about 40 declarations that
15 are on file.

16 THE COURT: Right.

17 MR. SCHAGER: The background for this is what I
18 think is the proper approach here, and that is that, you
19 know, we're not just looking at a statute, we're looking at
20 how statutes apply to facts.

21 THE COURT: Okay.

22 MR. SCHAGER: And that's what lawyers are taught
23 to do.

24 THE COURT: Right.

25 MR. SCHAGER: And I think it would be relevant for

1 the Court not to see just the citations to my 15 clients
2 there in that page that we added to the brief, but to the
3 other declarations as well. I think the Court ought to have
4 -- be able to refer to 40 different people of the 100 or so
5 involved here who submitted these declarations, spent a lot
6 of time working on them, and that's basically their
7 testimony, and I think there ought to be an index to their
8 testimony.

9 THE COURT: But you're -- but what you're -- but
10 you don't represent them, right, and then you're seeking to
11 characterize what they said in their declarations in your
12 submission. They may not agree with the way that you
13 characterize what they said.

14 So the purpose of testimony is that -- I mean the
15 purpose of testimony is that it speaks for itself. So I
16 just don't understand what -- you would sit down and you
17 would go through everybody else's declaration and you would
18 give me citations to portions of their declarations that
19 support your arguments?

20 MR. SCHAGER: Well, I wouldn't phrase it exactly
21 like that, Your Honor.

22 THE COURT: Well how would you --

23 MR. SCHAGER: I had something to do with the
24 development of that form. My firm basically developed the
25 model for those declarations and it was used by all counsel.

1 So I pretty much know where the declarations are.

2 I'm not talking about citing things to support my
3 individual arguments, the declarations were developed to
4 support the statement of facts in the brief, and I thought
5 an index to the declarations would be helpful for the Court
6 to see how the claimants testified in support of the
7 allegations of the brief. It wouldn't be to add any
8 substantive allegations, it would be to point out that it's
9 not just one person who argues that fact, it's 40. And I
10 think the volume of that testimony, and we did this without
11 live witnesses to facilitate the hearing, but I think the
12 volume of that testimony is relevant and I think the Court
13 ought to be able to see it in -- see it through an index so
14 the Court doesn't have to itself go through 40 declarations
15 to find the additional support for that point.

16 THE COURT: Okay. Mr. Miller?

17 MR. MILLER: Well, Your Honor, this is outside the
18 hearing procedures order which was designed to get ready and
19 get prepared, and the problem that this raises is the one of
20 optional completeness. If they're going to now cite a bunch
21 of new material on the eve of the hearing then we're going
22 to have to divert resources to go through and say, yeah, but
23 if you're going to look at that you ought to look at this as
24 well. And the question is why that adds anything to what's
25 already in the record?

1 It's in the record, it's available to the Court,
2 you can see it --

3 THE COURT: Well --

4 MR. MILLER: -- and the fact that a number of
5 people express some subjective view on something and a bunch
6 of other people express the same subjective review -- view
7 in response to a form, which counsel says he prepared,
8 doesn't seem to us like that's a valuable use of our
9 immediate pretrial resources.

10 THE COURT: That's not -- yeah, that's not -- I
11 mean that's why this is -- that's why this procedure -- the
12 utility of the procedure has its limits.

13 I do not believe that the fact that you are going
14 to be able to add additional citations, which as you just
15 told me the testimony is tailored to meet the argument,
16 that's not what -- that's not what testimony is supposed to
17 be. Testimony is supposed to be here's what happened to me.
18 It's not supposed to be generated by a legal argument that
19 someone makes.

20 So if in your closing arguments you want to say,
21 and oh by the way, a bunch of other claimants feel the same
22 way and you want to generally point me in that direction
23 that's fine, but I think Mr. Miller is right, if you then
24 formally, I'll say, cherry pick out particular paragraphs
25 then it's an exercise in completeness because then someone

1 else should have an opportunity to say, yes, but in the next
2 paragraph something else was said. So we're going get into
3 a bottomless pit.

4 Yes, it's a substantial record, but it's quite
5 manageable compared to records that I handle routinely. So
6 I think you can trust that I will read the record, comb the
7 record, look for every favorable inference from the record.

8 And just to be clear, and I think it -- you know,
9 to pick up on something that Mr. Miller said, I'm very aware
10 that, you know, this is not the usual case in the sense that
11 you folks are representing real people who didn't get what
12 they expected, feel they deserved, who were swept into a
13 situation that few people could predict and no one wanted to
14 occur.

15 So I think you should be assured that I come to
16 this from an impartial standpoint just as you say, I'm going
17 apply the law to the facts and give you a decision, and to
18 the extent that it turns out that one or two or ten people
19 establish a factual record that takes them, you know, from a
20 -- to a different place than the others that's what I'm
21 supposed to do. That may not happen, I don't know, but I
22 think that we're going to devolve into an unmanageable
23 situation if I agree with your request.

24 I mean you've got the supplemental citations, so
25 we've got, you know, for each of your original citations

1 you've already got in here supplemental citations. And,
2 Mr. Miller, I didn't hear you to be complaining about the --

3 MR. MILLER: No, Your Honor, we agreed to the
4 supplemental filing, and you know, we've allowed that, Your
5 Honor, but that was some time ago and this is the --

6 THE COURT: Well --

7 MR. MILLER: -- at the end of the week right
8 before the hearing.

9 THE COURT: -- we're at the eve of, so.

10 MR. SCHAGER: That's fine, Your Honor.

11 THE COURT: Okay.

12 MR. SCHAGER: Yeah. Thank you.

13 THE COURT: Okay.

14 MS. SOLOMON: Your Honor, I just wanted to add to
15 that, that -- and I wanted to be clear on this, from my
16 perspective my clients aren't asking anything other than the
17 Court decide this matter on the law --

18 THE COURT: Sure.

19 MS. SOLOMON: -- and not on the basis of sympathy.

20 THE COURT: No, and I completely agree with you,
21 and I was simply reacting to the fact that I think that some
22 folks sometimes feel that there's a predisposition to just
23 do whatever it is, you know, the company or the debtor says.
24 It's a big case, the big guy must be right. And I'm just
25 stating the fact and the reality that that's not the way it

1 is here as far as I'm concerned, as far as anybody in this
2 building is concerned frankly.

3 So you're absolutely right, you don't -- if the
4 law is against you and sympathy is with you then --

5 MS. SOLOMON: Too bad.

6 THE COURT: -- too bad.

7 MS. SOLOMON: Right?

8 THE COURT: But yes, I will apply the facts to the
9 law, but I just wanted to express that I'm mindful of the
10 fact that these are, you know, real folks.

11 MS. SOLOMON: We appreciate that, Your Honor.

12 THE COURT: That's all. Okay?

13 MR. MILLER: We have nothing further, Your Honor.

14 THE COURT: There's someone behind you with
15 something further.

16 MR. KAPLAN: I will -- we will get the
17 supplemental declarations of -- we'll obviate the direct of
18 the Neuberger witnesses --

19 THE COURT: Okay.

20 MR. KAPLAN: -- down to the Court later today or
21 tomorrow. We will try and work out whatever objections --

22 THE COURT: Okay.

23 MR. KAPLAN: -- there are, if there are -- if --

24 THE COURT: Okay.

25 MR. KAPLAN: -- we can't work them out then Your

1 Honor will deal with them on Tuesday.

2 THE COURT: Okay. And then just be in contact
3 with chambers to the extent that you want to work out, you
4 know, the -- the technical. If you want to go with paper
5 because it's cheaper --

6 MR. KAPLAN: I'm fine with paper, I don't know
7 what my colleagues want to do.

8 THE COURT: Whatever -- whatever you want to do.

9 MR. KAPLAN: Yeah.

10 THE COURT: Whatever you want to do we'll do.
11 That's the --

12 MR. KAPLAN: Thank you, Your Honor.

13 THE COURT: -- clearest way to say it.

14 MR. KAPLAN: We'll work that out and be in touch
15 with chambers, Your Honor. Thank you.

16 THE COURT: Mr. Michaelson is being unusually
17 quiet hiding in the back there.

18 MR. MICHAELSON: I think my colleagues have done
19 an excellent job of --

20 THE COURT: How are you today, Mr. Michaelson?

21 MR. MICHAELSON: I'm doing fine, Your Honor. I
22 think my colleague did an excellent job of explaining our
23 position.

24 THE COURT: Okay.

25 MR. MICHAELSON: I have nothing to add.

1 THE COURT: Okay. All right, thank you folks very
2 much. We will see you at 10 o'clock on --

3 UNIDENTIFIED SPEAKER: Tuesday.

4 THE COURT: -- Tuesday.

5 (A chorus of thank you)

6 THE COURT: All right. Have a good weekend.

7 (Whereupon, these proceedings concluded at 9:47 a.m.)
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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn
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Date: April 1, 2014